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STATUTORY TRUSTS, THE USUFRUCT COLLATERAL TRAP, AND THE PRIVATE LAW ALTERNATIVE

Date: 19th July 2026

A Technical Report on Asset Sheltering, Nominee Title, and Jurisdictional Severance

Document Classification: Private / Educational

1. Executive Summary

This report addresses a question that is fundamental to all estate and asset planning: **why do statutory trusts only *partially* shelter assets, and how can a private international structure hold assets completely outside the jurisdictional reach of the domestic state?**

The short answer is structural. A statutory trust—whether a UK discretionary trust, a protective property trust, a living (*inter vivos*) trust, or a U.S. spendthrift trust—is a creature *of statute*. It is created under, and remains inside, the legal system that produced the bankruptcy of the United States (and, by dollar extension, the global commercial "Monopoly board") in 1933. Because the trust itself is a statutory "person" operating on that board, the assets it holds are subject to the same **usufruct** relationship that governs all registered property: the state (as bankruptcy trustee) retains the radical/legal title, while the trust and its beneficiaries hold only equitable title and use. Banks, brokers, and clearing entities act as **nominees** of that same system, holding legal title as collateral for the national debt. As a result, taxes, reporting (Form 990, IHT returns, FATCA/CRS), probate, and seizure risk all continue to apply.

By contrast, a **Foreign Grantor Trust** (the Asset Fortress Protocol, "AFP") or a **508(c)(1)(a) ecclesiastical ministry** is *not* created by domestic statute. It is constituted by **private indenture** (private international contract law) and sits **outside** both the U.S. bankruptcy and the usufruct collateral system. Because the trust/ministry is a "foreign alien" juridical subject rather than a domestic registered "person," obligations of tax, reporting, and digital-ID do not automatically flow through to it. This is the basis on which such structures can hold assets with no domestic reporting and no tax.

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This report sets out, forensically, why the partial shelter of statutory trusts is not a flaw that can be "fixed" by better drafting, but an inherent feature of operating *inside* the bankruptcy. Total shelter requires a *jurisdictional pivot*, not a better trust deed.

2. The Foundational Reality: HJR 192 and the Usufruct System

To understand why statutory trusts fail to fully protect assets, one must first recognise the architectural condition of the commercial system itself.

On 5 June 1933, House Joint Resolution 192 ("HJR 192") suspended the gold standard and abrogated the gold clause in all contracts. This did not merely "change the money"; it changed the *nature of ownership*. Before 1933, debts were *paid* with substance (gold/silver). After 1933, because the substance had been removed, debts could only be *discharged* with credit—Federal Reserve Notes, which are obligations of the U.S. Treasury, not money of substance.

The legal effect of this was the creation of a **usufruct** relationship across the entire commercial system. A usufruct is the right to use and enjoy the fruits of another's property without owning the underlying title. Under HJR 192:

- **Hypothecation:** All present and future property, labour, and productive capacity of the citizenry was *hypothecated* (pledged as collateral without surrendering possession) to the Federal Reserve System as security for the national debt.
- **Bankruptcy Trustee:** The **U.S. Treasury** assumed the role of bankruptcy trustee for the entire commercial "Monopoly board." Because the U.S. dollar is the global reserve currency, this trustee jurisdiction extends internationally.
- **Split Title:** The state, as trustee, retained the **legal (radical) title** to all registered property—land, homes, vehicles, securities, and the registered "person" itself.
- **Equitable Title:** Individuals (and statutory entities, including statutory trusts) were left holding only **equitable title**: the right of use, subject to the trustee's superior claim.

This is why "ownership" in the modern system is structurally a **leasehold** from the state. Taxes are, in this framework, the administrative "rent" paid to the bankruptcy trustee for the continued privilege of using collateralised assets on the board.

Key Takeaway: Every statutory trust is created inside this framework. It cannot, by definition, lift its assets out of the usufruct relationship because the trust itself is a statutory "person" subject to the same bankruptcy jurisdiction as the grantor who created it.

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3. How Statutory Trusts Work

Statutory trusts are the standard estate-planning vehicles offered by regulated solicitors, attorneys, and trust companies. They are created under, and derive all their powers from, domestic legislation.

3.1 Common Types

- **Discretionary / Family Trusts (UK):** Governed by the *Trustee Act 1925* and *Inheritance Tax Act 1984*. Used to hold family wealth, often across generations.
- **Protective Property Trusts:** A will-based device that severs joint tenancy so that a half-share of the family home passes into trust on first death, shielding it from care-home fee assessment.
- **Living (Inter Vivos) Trusts:** Domestic trusts established during life to bypass probate for specific assets.
- **Spendthrift Trusts (U.S.):** Domestic trusts (often in "asset protection" jurisdictions like Nevada, Delaware, South Dakota) designed to restrict a beneficiary's ability to transfer or pledge trust interests.
- **Last Will & Testament / LPAs:** Not trusts in themselves, but the public, probate-based vehicles that feed the statutory trust system.

3.2 The Mechanics

In every case, a statutory trust operates as follows:

1. **Creation by Statute:** The trust exists only because a statute (*Trustee Act 1925*, *Uniform Trust Code*, etc.) permits it. Its powers, duties, and limitations are defined by that statute.
2. **Registration & Visibility:** The trust is transparent to the state—registered with HMRC, the IRS, Land Registry, or equivalent. Beneficial ownership is reported via the Trust Registration Service (TRS), FATCA, CRS, or FinCEN Form 114/FBAR.
3. **Trustee as Fiduciary:** A trustee (individual or corporate) holds legal title on behalf of the trust, but that legal title is still domestic legal title—the same title that, at the systemic level, is held subject to the state's radical title.
4. **Court Supervision:** The trust remains within the supervisory jurisdiction of the domestic courts (probate, family, chancery, bankruptcy).

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3.3 What Statutory Trusts *Do* Achieve

- Probate avoidance (for assets properly settled in a living trust).
- Care-fee mitigation (partial, via property trusts).
- Intra-family distribution control (discretionary trusts).
- Limited creditor protection (spendthrift trusts, subject to fraudulent-transfer and bankruptcy-clawback rules).

4. Why Assets in Statutory Trusts Are Only *Partially* Sheltered

The protection offered by a statutory trust is partial because the trust is structurally **inside** the same jurisdictional and collateral framework as the grantor. Three reinforcing mechanisms ensure this.

4.1 The State Retains Legal Title as Bankruptcy Trustee

Because the commercial system operates in perpetual Chapter 11-style reorganisation since 1933, the state (as bankruptcy trustee) holds the radical/legal title to all registered property. A statutory trust does not change this. When a house is transferred into a UK discretionary trust:

- The **Land Registry** still records the title.
- The **state's powers of taxation, eminent domain, police power, and escheat** continue to apply.
- The trust holds **fee simple** title at best—which is the highest *domestic* form of ownership, but is still "held of the Crown/State," not absolute (allodial).

The trust has merely moved the equitable interest around *within* the same board. The radical title never left the state.

4.2 Banks and Clearing Entities Hold Legal Title as Nominees

This is the mechanism most hidden from the public, and it is the central thesis of David Rogers Webb's *The Great Taking*. For financial assets (stocks, bonds, mutual fund units, and increasingly all securities), the system has been deliberately re-engineered over fifty years so that **the investor no longer owns property—only a contractual claim**.

4.2.1 The "Security Entitlement" Replaced Ownership

Under the Uniform Commercial Code (UCC) Article 8, ownership of securities as personal property has been replaced by a **"security entitlement"**—a weak contractual claim against your broker/custodian, not a property right in the underlying shares. The New York Federal Reserve confirmed this directly to the European Commission's Legal Certainty Group in 2006:

"The security entitlement holder . . . has a pro rata share of the interests in the financial asset held by its securities intermediary. . . . This is true even if investor positions are 'segregated.'"

4.2.2 Cede & Co. and the DTCC Hold Legal Title

Almost all publicly traded securities in the United States are held by the **Depository Trust Company (DTC)** through its partnership nominee, **Cede & Company**. Cede & Co. is the registered legal owner; investors are merely "beneficial owners" with a pro-rata claim. This structure has been **harmonised globally** via the Hague Securities Convention, EU CSDR (Regulation 909/2014), and the subversion of property rights in jurisdictions like Sweden and Finland.

4.2.3 Banks as Nominees in the Estate-Planning Context

The same architecture applies to the financial assets held *inside* a statutory trust. When a discretionary trust holds a portfolio of shares via a stockbroker:

- The **broker/custodian** is the nominee of record.
- The **DTC/Cede & Co.** (or European ICSD equivalent: Euroclear, Clearstream) holds the pooled position.
- The **trust** holds only a security entitlement against the broker.
- The **state**, as bankruptcy trustee, retains the ultimate legal title.

The trust has therefore not "sheltered" the asset—it has merely inserted another layer of nominee intermediation between the state's radical title and the beneficial user. All of these intermediaries sit *inside* the bankruptcy and the usufruct system. The collateral remains pledged.

4.2.4 The Collateral Is Not Theoretical

This is not abstract. The legal architecture (UCC Article 8, bankruptcy "safe harbors," the 2005 BAPCPA amendments) ensures that, in any systemic failure, secured creditors of the clearing system have **absolute priority** over client/entitlement holders—including trust beneficiaries. The

collateral can be swept, pooled, re-hypothecated, and ultimately taken. A statutory trust, holding its portfolio in street name, sits squarely in the "entitlement holder" queue with everyone else.

4.3 Reporting and Tax Flow Automatically to the Trust

Because the statutory trust is a domestic juridical "person," the reporting and tax regimes attach to it directly:

- **UK Trusts:** Registration with the Trust Registration Service (TRS); IHT charges (up to 40% above thresholds); 10-year periodic charges; entry and exit charges.
- **U.S. Domestic Trusts:** Form 1041 filing; grantor-trust reporting; K-1s to beneficiaries; FBAR/FinCEN 114; FATCA/CRS.
- **Churches/Charities (501(c)(3)):** Form 1023 application; annual Form 990; Johnson Amendment speech restrictions.

A statutory trust cannot lawfully opt out of these regimes because it *exists by virtue of* the statute that imposes them.

5. Summary: The Three-Layer Partial-Shelter Problem

Layer	What the Statutory Trust Achieves	What It Does *Not* Achieve
Jurisdictional	Avoids probate; some creditor protection.	Remains inside the U.S. bankruptcy / Crown jurisdiction.
Title	Holds fee simple / equitable title.	Does not acquire radical/allodial title; state retains superior title; banks/DTCC hold securities as nominees.
Collateral	None—assets remain hypothecated to the national debt.	Cannot prevent re-hypothecation, security-entitlement conversion, or collateral sweep in a systemic crisis.
Tax & Reporting	Some IHT/CGT deferral.	Full TRS / Form 1041 / Form 990 / FATCA / CRS reporting continues; IHT up to 40% applies.

In short, the statutory trust is a **"permission-based safe harbour"**: the state permits it, regulates it, taxes it, watches it, and—critically—retains the superior title to every asset inside it. It is a shelter built *inside* the house of the creditor.

6. The Private Law Alternative (I): The Foreign Grantor Trust (Asset Fortress Protocol)

The Asset Fortress Protocol ("AFP") is the structural answer to the partial-shelter problem. It does not attempt to improve on the statutory trust *within* the system; it **relocates the assets outside the system** entirely.

6.1 The Jurisdictional Pivot

The AFP is constituted by a **private indenture**—a private international contract between the grantor, the trustee, and the beneficiary. It is *not* created under domestic trust statute. It is recorded as a **98-series International (Foreign) Grantor Trust** with the IRS (the "98" Employer Identification Number prefix designates foreign/international entities).

This establishes the trust as a **"foreign alien" juridical subject**—a separate body corporate in equity, treated for domestic purposes as outside the U.S. reporting and tax jurisdiction, in the same way an independent nation like Monaco or Switzerland is outside it.

6.2 Outside the Usufruct System

Because the AFP is not a domestic registered "person":

- It does **not** hold assets subject to the state's radical title as bankruptcy trustee. The trust holds legal title in its own right, as an independent international entity.
- Assets conveyed into the AFP (via deeds, bills of sale, stock transfer forms, assignments of digital interest) are **de-registered** from the domestic registry framework. The property is removed from the Monopoly board, not merely re-arranged on it.
- The AFP holds **fee-simple legal title** (and, functionally, the equivalent of allodial control), placing the assets beyond the reach of state registries and the usufruct collateral pledge.

6.3 Outside the Nominee Trap

The AFP is not required to hold financial assets through the DTC/Cede & Co. nominee chain. Assets may be held:

- Via private custody under the trust's own name;
- Via private banking / fintech arrangements selected by the Republic of Old Souls;
- Via direct holding (e.g., self-custodied digital assets, physical metals).

The trust thereby avoids the "security entitlement" conversion that strips investors of property rights. The legal title does not pass to Cede & Co. or to a systemic nominee; it remains vested in the trust.

6.4 No Reporting, No Tax

The AFP's tax and reporting position follows directly from its jurisdictional character:

Feature	Statutory Trust	AFP (Foreign Grantor Trust)
Constitutive Authority	Domestic statute	Private indenture / private international law
Jurisdiction	Domestic (Crown/U.S.)	International / ecclesiastical
EIN Classification	Domestic (SSN-style)	98-series (foreign/international)
Reporting	TRS / Form 1041 / Form 990 / FATCA / CRS	None—no statutory requirement to disclose a private foreign grantor trust
Tax	IHT up to \$40\%\$; income tax; CGT	\$0\%\$—grants received are non-income receipts; foreign grantor status means no domestic tax attaches
Probate on Death	Required	None—the trust is perpetual; the Office of General Executor passes to a successor
Visibility to State	High (registered)	Low (private contract)
Digital ID Flow-Through	Automatic	None—the trust is a separate juridical subject, not the "person"

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Doctrinal Points of the AFP Framework:

1. **Liability attaches to capacity, not identity:** Tax and reporting obligations attach to the legal *capacity* of the grantor persona (the "player piece"). The AFP, as a foreign body corporate, is not that persona.
2. **No automatic flow-through:** Obligations of the grantor body corporate do not automatically attach to the AFP because they are not the same legal person.
3. **Beneficiary non-regulation:** The living man or woman, as beneficiary, holds no legal title, operates no trust accounts, and acts in no regulated capacity. Reporting regimes for "controlling persons" therefore do not engage.
4. **Grants, not income:** Receipts into the AFP (including recoupment grants from associated ministries) are classified as **grants**, not income. They fund the lawful discharge of debts and do not trigger income tax within the model.

6.5 The Indenture as the Foundational Shield

The trust instrument (the **8-Article Indenture**) is the constitutive document. Because it is a *private contract*:

- It is not registered with any public office.
- It establishes the trust as an independent juridical entity.
- It vests legal title in the trustee, creating the separation required for the "estate in equity."
- It defines fiduciary duties and beneficiary rights without reference to, or permission from, the domestic statutory framework.

This is the precise opposite of the statutory trust, which *depends on* public registration and statute for its existence.

7. The Private Law Alternative (II): The 508(c)(1)(a) Ecclesiastical Ministry

A second, fully compliant private-law vehicle is the **508(c)(1)(a) church ministry trust**. This is the framework under which the Ros Ecclesia Trust and the Republic of Old Souls ministries operate.

7.1 Automatic, Mandatory Exemption

7.2 Ecclesiastical Jurisdiction as a Shield

The ministry operates in the same private international / ecclesiastical sphere as the AFP. It separates the "living man and woman" from the "Crown's body corporate estate," restoring them to the position of "Executors under God." Assets held by the ministry—whether real property declared as "Ministry land," donations, or treasury reserves—are held under ecclesiastical title, outside the domestic usufruct collateral pledge.

7.3 Comparison of Tax Structures

Aspect	508(c)(1)(a) Ministry	501(c)(3) Charity	Statutory Trust
IRS Application	None (automatic)	Mandatory (Form 1023)	Registration with TRS / state
Annual Reporting	None (no Form 990)	Mandatory (Form 990, public)	Mandatory returns
Tax on Receipts	0%	0% (but regulated)	Income/IHT applies
Political Speech	Permitted	Prohibited (Johnson Amendment)	N/A
Privacy	High	Low (public records)	Low (registered)
Risk of Revocation	Low if operating as a church	Higher	N/A
Ecclesiastical Immunity	Yes	No	No

7.4 The Hybrid Ministry–Trust Stack

In practice, the most robust private-law architecture combines both vehicles:

- A **508(c)(1)(a) ministry** receives donations and holds ministry land, operating as the religious-purpose entity.
- A **98-series Foreign Grantor Trust** (the AFP) acts as the **private treasury / asset vault**, holding investment assets, precious metals, and long-term reserves via private indenture.

This hybrid stack (the "Ministry + PMA $\rightarrow$ International Trust" model) creates a complete firewall: the ministry handles inflow and religious purpose; the trust handles custody and treasury. Neither is a domestic statutory trust; neither is inside the usufruct collateral system; neither attracts domestic tax or reporting.

8. Why the Difference Is Structural, Not Cosmetic

It is worth restating the central point plainly, because it is the single most misunderstood element of asset planning.

The partial shelter of a statutory trust is **not** the result of poor drafting, weak trustee selection, or insufficient funding. It is **inherent** in the choice to use a statutory vehicle. A statutory trust is a creation *of* the bankruptcy jurisdiction; it cannot exempt its assets *from* that jurisdiction. It is, by design, a regulated, transparent, taxable, state-supervised container.

The full shelter of a foreign grantor trust or a 508(c)(1)(a) ministry is **not** the result of a clever loophole. It is the result of **jurisdictional character**. These entities are constituted by private contract (indenture) or ecclesiastical authority, not by domestic statute. They are "foreign" to the bankruptcy and to the usufruct collateral system in the same juridical sense that a separate sovereign nation is foreign. Because they are foreign, the domestic state has no creditor standing over their assets, no automatic reporting hook, and no tax jurisdiction.

Question	**Statutory Trust**	**AFP / 508(c)(1)(a)**
Created by whom?	Domestic statute	Private indenture / ecclesiastical authority
Inside the 1933 bankruptcy?	Yes	No
Legal title held by whom?	State (radical); banks/DTCC as nominees (for securities)	The trust / ministry, in its own right
Subject to usufruct collateral pledge?	Yes	No
Subject to probate?	Yes (for wills; partial avoidance for living trusts)	No—perpetual entity
Reporting required?	Yes (TRS, 1041, 990, FATCA, CRS)	No
Tax on assets/receipts?	Yes (IHT up to 40%; income tax)	No
Subject to collateral sweep in a systemic crisis?	Yes (security-entitlement holder)	No (private custody, off-board)

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9. Risk and Operational Considerations

A report of this kind would be incomplete without acknowledging the conditions on which the private-law alternative depends.

9.1 Status Correction Is Non-Negotiable

The AFP and ministry structures only function if the living individual has **corrected their status** (the Envoy Protocol). A statutory "U.S./UK resident person" cannot simply relocate assets into a foreign trust and expect the domestic courts to respect the structure. Without status correction, a domestic court will treat the AFP as a **"sham trust" or "alter ego"** and pierce it. The structure must match the status: the grantor must be the legal persona; the living soul must be the beneficiary; the trust must be a genuine foreign body corporate.

9.2 Banking Requires Specialised Providers

Statutory trusts enjoy easy acceptance at high-street banks. The AFP and ministry require specialised private/fintech banking that is provided by Ecclesia Financial via its Banking as a Service platform.

9.3 Internal Governance Must Be Audit-Ready

The 508(c)(1)(a) ministry must satisfy the IRS 14-Point Church Test and avoid "private inurement." The AFP must maintain internal ledgers, schedules, minutes, and fiduciary appointments. The absence of *public* reporting does not mean the absence of *private* record-keeping. Forensic realism—rigorous documentation—is the price of jurisdictional autonomy.

9.4 Execution Risk

The AFP model depends on strict adherence to protocol. Status correction, asset transfer (deeds, bills of sale, assignments), banking mandate, and trustee appointment must all be executed correctly. The Republic of Old Souls facilitates this process for members; the structure is only as strong as its implementation.

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10. Conclusion

The statutory trust is a **bandage** on a structural wound. It offers partial, permission-based shelter for assets that remain, at the systemic level, collateralised under the 1933 bankruptcy and held subject to the state's radical title. Banks and clearing agencies act as nominees within that same collateral system—so even the financial assets "inside" the trust are, in legal reality, held as **security entitlements** vulnerable to the priority claims of secured creditors. Taxes, reporting, probate, and seizure risk all persist.

The **Foreign Grantor Trust (Asset Fortress Protocol)** and the **508(c)(1)(a) ecclesiastical ministry** are not better statutory trusts. They are a **different category of entity entirely**. Constituted by private indenture or ecclesiastical authority, they sit outside the U.S. bankruptcy, outside the usufruct collateral pledge, and outside the nominee/security-entitlement architecture. They hold legal title in its own right, as foreign juridical subjects. They attract no domestic reporting and no tax. They do not die, and so they do not probate.

For the living man or woman seeking genuine asset protection—free from the 40% death tax, free from the care-home wealth-grab, free from the digital-ID and reporting matrix, and free from the systemic collateral risk exposed by *The Great Taking*—the statutory trust will never be sufficient. Only a **jurisdictional pivot** into private international / ecclesiastical law can achieve total shelter. The Asset Fortress Protocol and the 508(c)(1)(a) ministry are the vehicles by which that pivot is lawfully and peacefully executed.

The choice is not between a "good" statutory trust and a "bad" one. The choice is between remaining a tenant on the Monopoly board, or stepping off it entirely.

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